

AFFILIATED UTE CITIZENS,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-75-A
PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 3, 1998

This is an appeal from a February 19, 1998, decision of the Phoenix Area Director, Bureau of Indian Affairs, concerning management of hunting and fishing resources under section 10 of the Ute Partition Act, 25 U.S.C. § 677i. The Board received Appellant's notice of appeal on March 11, 1998.

The Board also received three other appeals from the same decision, filed by the Aboriginal Uintah Nation, the Ute Distribution Corporation, and the Ute Indian Tribe of the Uintah and Ouray Reservation. The Assistant Secretary - Indian Affairs timely assumed jurisdiction over these three appeals under 25 C.F.R. § 2.20(c). The Board transferred the appeals to him on April 14, 1998.

The Assistant Secretary also attempted to assume jurisdiction over this appeal. However, with respect to this appeal, his notice under 25 C.F.R. § 2.20(c) was untimely, and this appeal therefore remained before the Board. See Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43 (1994) (The Assistant Secretary lacks authority to assume jurisdiction over an appeal filed with the Board once the timeframes established in 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b) have passed).

By order of April 14, 1998, the Board requested recommendations from the parties as to how the Board should proceed with this appeal in order to lessen the burden on the parties resulting from the bifurcation of these appeals. On May 28, 1998, following receipt of the parties' responses, the Board stayed proceedings in this case pending a decision by the Assistant Secretary in the three appeals over which he had assumed jurisdiction.

On July 13, 1998, the Board received a copy of a document titled "Procedures for the Disposition of Ute Distribution Corp, Affiliated Ute Citizens, Aboriginal Uintah Nation, and Ute Indian Tribe of Uintah and Ouray Reservation v. Phoenix Area Director". The document was signed by the Assistant Secretary and was dated July 9, 1998. It stated in part:

In order to protect the due process rights of all interested parties and to insure consistent decision making, the Solicitor, on behalf of the Secretary, has asked that I decide the AUC [Affiliated Ute Citizens] appeal, and therefore please be advised that I assume jurisdiction of the AUC appeal herein. See 43 C.F.R. § 4.5.

Having been thus alerted to an apparent decision by the Secretary or the Solicitor to assume jurisdiction over this appeal under 43 C.F.R. § 4.5, the Board awaited the formal decision document. 1/ When no such document had been received by August 6, 1998, the Board informed the parties that, in the absence of such a document, this appeal remained pending before the Board. The Board's August 6, 1998, notice stated:

[T]he Board will dismiss this appeal upon receipt of either a document signed by the Secretary stating that he takes jurisdiction over this appeal under 43 C.F.R. § 4.5 or a document signed by the Solicitor stating that he takes jurisdiction over this appeal under 43 C.F.R. § 4.5 pursuant to authority delegated to him by the Secretary.

On September 1, 1998, the Board received a letter from an attorney in the Solicitor's Office. The letter enclosed a copy of a July 9, 1998, memorandum from the Solicitor to the Assistant Secretary titled "Secretary's Assumption of Jurisdiction from IBIA of Certain Appeals." The memorandum states:

Pursuant to 43 C.F.R. § 4.332(b) and 25 C.F.R. § 2.20(c), you have taken jurisdiction over certain appeals from decisions of BIA Area Directors from the Interior Board of Indian Appeals (IBIA). In two of these cases, your ability to assume jurisdiction over all necessary appeals did not cover some of the earliest appeals filed.

The Secretary has requested me to look into these matters and decide if these appeals should be decided by you, in order to protect the due process rights of all interested parties and to insure consistent decision making.

I conclude that such action is necessary, and therefore ask that you decide (a) the appeal of the Affiliated Ute Citizens from the February 19, 1998 decision of the Phoenix Area Director concerning the management of hunting and fishing rights between the Mixed-blood and Full-blood Utes; and (b) [certain other appeals, not relevant here].

1/ Although the Assistant Secretary stated that he was assuming jurisdiction over the appeal, he did not appear to be claiming authority to act for the Secretary under 43 C.F.R. § 4.5. Rather, he appeared to be saying that the Solicitor had exercised the Secretary's authority under sec. 4.5 and had referred the matter to him.

Although the Solicitor does not specifically state in his memorandum that he is assuming jurisdiction over this appeal under 43 C.F.R. § 4.5, and in fact does not even mention sec. 4.5, it appears likely that he intended to exercise the Secretary's authority under sec. 4.5. It also appears likely that, at least with respect to the appeals mentioned in the memorandum, the Secretary has delegated his authority under sec. 4.5 to the Solicitor. In any event, the Board declines to assume that the Solicitor has acted without proper authority.

Therefore, the Board construes the Solicitor's July 9, 1998, memorandum to the Assistant Secretary as an assumption of jurisdiction over this appeal under 43 C.F.R. § 4.5, with respect to which the Solicitor acted under authority delegated to him by the Secretary.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge